

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK NC 27711

**October 06, 1994**

**MEMORANDUM**

SUBJECT: Section 112(1) Delegations and Title V Permits

FROM: Karen L. Blanchard, Section Chief  
Program Integration and Health Section PAB (MD-13)

TO: See Attached

This memorandum was originally written to the Office of Air Quality Planning and Standards in response to the memorandum of March 21, 1994 from Doug Skie of Region VIII. This response was made available in draft form to the Regional Offices in April, 1994. We believe that this response should now be made official because it addresses not only the specific questions asked, but the broader issues underlying the interface between title V and delegations under section 112(1).

**Broader Issues**

The Office of General Counsel has interpreted the Clean Air Act (Act) as follows:

- o Once a State's title V permit program is approved, all section 112 maximum achievable control technology (MACT) standards must be incorporated into a source's title V operating permit. This title V requirement must be satisfied even if a State has not formally taken delegation.
- o All States must implement and enforce all requirements of section 112 standards once they are included in the title V operating permit.
- o Before a permit is issued, the State only has the responsibility to implement and enforce section 112 standards if we delegate them that authority under section 112(1).
- o After a permit is issued, the State has full responsibility for section 112 standards.

- o States are not required to take formal delegation of any 112 standard. However, only formal delegation will relieve sources of the burden to report to the Environmental Protection Agency (EPA).

### **Use of the Term "Delegation"**

There has been some confusion centered around the legal vs. the informal use of the word "delegation." The word delegation has been used informally to refer to whether States are required to implement and enforce section 112 rules. Whether or not States do anything under section 112(1), once they have an approved title V permit program, they are required to issue permits that assure compliance with all section 112 standards.

A permit "assures compliance" with a section 112 standard if it requires the source to meet requirements as stringent as the federally promulgated standard. This means that, among other things, the permit must contain requirements for reporting to the State that are as stringent as the requirements set forth in the Federal standard for reporting to the EPA. The EPA would be required to object to a permit that did not contain these reporting requirements.

However, formal delegation of a section 112 standard is an action the EPA may take under section 112(1), if a State requests it. Formal delegation under section 112(1) results in the delegated State standing in for the EPA as a matter of Federal law. This means that obligations a source may have towards the EPA in the federally promulgated standard, upon delegation, become obligations to the State (except for functions that the EPA retains for itself).

There are two practical consequences of this distinction between issuing permits that assure compliance with section 112 standards, and taking formal delegation of section 112 standards:

1. Because section 112(1) is voluntary and title V is not, the Act does not require a State to implement a section 112 standard prior to the time it issues a title V permit to a source.
2. Until formal delegation occurs, sources are obligated to continue reporting to the EPA as required by the section 112 standard, regardless of any similar obligations to report to the State in the context of issuance of a title V permit.

In the legal sense of the word, under the Act, section 112 (1) delegation is voluntary. This just means that before and only before a title V permit is issued, States have the discretion whether to take on those early provisions of MACT standards which require some action before the title V permit can

be revised or issued (or before a permit program is approved in a State). In addition, delegation is a mechanism to get States to take on requirements for non-title V sources, and is a mechanism for any sources to avoid dual reporting to both the EPA and the State.

### **Specific Question Raised by Region VIII**

The following points address the questions asked in Region VIII's memorandum:

1. States do not need to accept delegation of 112 standards in their title V submittals. Rather, States must show that they have sufficient authority to issue permits that assure compliance with section 112 standards.
2. States do not need to have section 112 rules delegated to them through section 112(1) in order to implement and enforce those rules. As applicable requirements, section 112 rules must be incorporated into a title V permit. Section 112(1) delegation is not necessary for this to happen. However, further discussion is needed to determine how best to ensure that states take delegation of section 112 rules before a title V permit is in place, so that Regional offices are not overwhelmed.

As explained above, States may issue permits that assure compliance with section 112 standards without first taking delegation of those standards from the EPA. The procedures a State must follow before it can issue such permits will be determined as a matter of State law.

3. When Section 112 rule is incorporated into the title V permit (as is required), the State is a legal recipient of documents and information. Section 112(1) is not necessary to make this so. Before the rule can be incorporated into a title V permit, the Regional office is the legal recipient of documents and information unless the State has taken delegation of the rule under section 112(1).

As explained above, issuing title V permits that assure compliance with a section 112 standard means imposing reporting requirements as stringent as those found in the federally promulgated standard. Thus, that delegation under section 112(1) is voluntary should not interfere with the State's ability to implement and enforce section 112 standards through the title V program.

I hope this information helps to clarify these issues. We look forward to discussing these issues further with you.

Addressees:

Regional Air Branch Chiefs  
Regional Permits Branch Chiefs  
cc: Julie Andresen (MD-13)  
Kathy Kaufman (MD-13)  
Sheila Milliken (MD-13)  
Adan Schwartz (2344)  
Tim Smith (MD-13)